

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

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U.S. COURT  
DISTRICT OF MAINE

RENEE MESSANA, PAUL DEMEO, PAUL )  
MESSANA, INDIVIDUALLY AND AS NEXT )  
FRIEND OF RAYMOND MESSANA AND ARIANA )  
MESSANA )

Plaintiffs,

v.

ACRES OF WILDLIFE CAMPGROUND, INC. )

Defendant )

Docket No. 04-11913 MLW

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES the Defendant Acres of Wildlife Campground, Inc., by and through undersigned counsel, and responds to Plaintiffs' Complaint as follows:

**INTRODUCTION**

1. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 1 and therefore denies same.

**JURISDICTION AND OTHER RELEVANT LAW**

2. Defendant denies the allegations contained in Paragraph 2.

**PARTIES**

3. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 3 and therefore denies same.

4. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 4 and therefore denies same.

5. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 5 and therefore denies same.

6. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 6 and therefore denies same.

7. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 7 and therefore denies same.

8. Defendant admits the allegations contained in Paragraph 8.

#### **FACTS**

9. Defendant admits the allegations contained in Paragraph 9.

10. Defendant admits the allegations contained in Paragraph 10.

11. Defendant denies the allegations contained in Paragraph 11.

12. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 12 and therefore denies same.

13. Defendant admits the allegations contained in Paragraph 13.

14. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 14 and therefore denies same.

15. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 15 and therefore denies same.

16. Defendant denies the allegations contained in Paragraph 16.

17. Defendant denies the allegations contained in Paragraph 17.

18. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 18 and therefore denies same.

19. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 19 and therefore denies same.

20. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 20 and therefore denies same.

21. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 21 and therefore denies same.

22. Defendant denies the allegations contained in Paragraph 22.

#### **COUNT I**

#### **NEGLIGENCE**

23. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 22 as if fully set forth herein.

24. Defendant denies the allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies the allegations contained in Paragraph 26.

WHEREFORE, Defendant demands judgment against Plaintiffs plus costs and for such further relief as this Court may deem appropriate.

#### **COUNT II**

#### **BREACH OF IMPLIED WARRANTY OF HABITABILITY**

27. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 26 as if fully set forth herein.

28. Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

**COUNT III  
INTERFERENCE WITH QUIET ENJOYMENT OF THE PREMISES**

30. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 29 as if fully set forth herein.

31. Defendant denies the allegations contained in Paragraph 31.

**COUNT IV  
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS  
RENEE MESSANA**

32. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 31 as if fully set forth herein.

33. Defendant denies the allegations contained in Paragraph 33.

**COUNT V  
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS  
PAUL DEMEO**

34. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 33 as if fully set forth herein.

35. Defendant denies the allegations contained in Paragraph 35.

36. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 36 and therefore denies same.

37. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 37 and therefore denies same.

**COUNT VI  
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS  
RAYMOND MESSANA**

38. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 37 as if fully set forth herein.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 40 and therefore denies same.

41. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 41 and therefore denies same.

**COUNT VII**  
**NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**  
**PAUL MESSANA**

42. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 41 as if fully set forth herein.

43. Defendant denies the allegations contained in Paragraph 43.

44. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 44 and therefore denies same.

45. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 45 and therefore denies same.

**COUNT VIII**  
**NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**  
**ARIANA MESSANA**

46. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 45 as if fully set forth herein.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 48 and therefore denies same.

49. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 49 and therefore denies same.

**COUNT IX  
IMPAIRMENT OF EARNING CAPACITY  
RENEE MESSANA**

50. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 49 as if fully set forth herein.

51. Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations contained in Paragraph 52.

**COUNT X  
IMPAIRMENT OF EARNING CAPACITY  
PAUL MESSANA**

53. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 52 as if fully set forth herein.

54. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 54 and therefore denies same.

55. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 55 and therefore denies same.

56. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 56 and therefore denies same.

**COUNT XI  
LOSS OF CONSORTIUM  
PAUL MESSANA**

57. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 56 as if fully set forth herein.

58. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 58 and therefore denies same.

59. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 59 and therefore denies same.

60. Defendant is without knowledge or information sufficient to form a response to the allegations contained in Paragraph 60 and therefore denies same.

**COUNT XII  
LOSS OF CONSORTIUM  
PAUL DEMEO**

61. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 60 as if fully set forth herein.

62. Defendant denies the allegations contained in Paragraph 62.

**COUNT XIII  
LOSS OF CONSORTIUM  
RAYMOND MESSANA**

63. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 62 as if fully set forth herein.

64. Defendant denies the allegations contained in Paragraph 64.

**COUNT XIV  
LOSS OF CONSORTIUM  
ARIANA MESSANA**

65. Defendant repeats and realleges each and every response contained in Paragraphs 1 through 64 as if fully set forth herein.

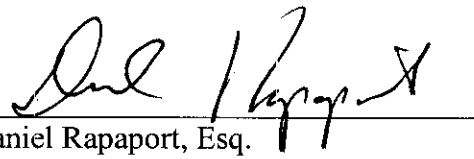
66. Defendant denies the allegations contained in Paragraph 66.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint is barred because this Court lacks personal jurisdiction over this Defendant.

2. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.
3. Any injuries or damages sustained by Plaintiffs were the result of the negligence of the Plaintiffs, which negligence was equal to or greater than that of the Defendant.
4. Plaintiffs have failed to mitigate their damages.
5. Plaintiffs' Complaint is barred by the doctrine of assumption of the risk.
6. Plaintiffs' Complaint is barred by the doctrines of estoppel and waiver.
7. Plaintiffs' damages were caused by the new and independent conduct, which conduct the Defendant could neither anticipate nor reasonably foresee and which superceding conduct was not a consequent of Defendant's actions, but which were the efficient cause of the injuries alleged sustained by Plaintiffs.
8. Plaintiffs' Complaint is barred by Maine's recreational use statute, 14 M.R.S.A. §159-A.
9. Plaintiffs' Complaint is barred by the doctrine of release.

DATED at Portland, Maine this 15<sup>th</sup> day of October, 2004.



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Attorney for Defendant  
Acres of Wildlife Campground, Inc.

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